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OLC 77-5737

20 December 1977

MEMORANDUM FOR THE RECORD

SUBJECT: Telephone Conversation with Peter Brush, Assistant  
General Counsel, Department of Energy, [REDACTED]

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1. [REDACTED] I received a call from Peter Brush who said that the Department of Energy (DOE) is working on a number of inquiries from Congressional committees on the subject of [REDACTED]. He said Representative Morris Udall (D., Ariz.), apparently in his capacity as Chairman of the Subcommittee on Energy & the Environment, House Committee on Interior and Insular Affairs, has levied a request on the DOE for all documents in their possession on this subject. Mr. Brush said he was trying to determine how they should handle CIA material in their files. He mentioned the two alternatives which were for DOE to give the Subcommittee access or for them to refer the Subcommittee to the Agency. I told Mr. Brush that we would take a strong position for the latter of these options under the concept of the third agency rule and the practices that we have followed with various congressional committees regarding other agency material in the hands of third agencies. Mr. Brush mentioned that they were also dealing with the Ad Hoc Select Committee on Energy and with the Subcommittee on Energy & Power, House Interstate and Foreign Commerce Committee. I told Mr. Brush that Ted Shackley, A/DDO, was our pivot man on this subject and I would talk with him and our General Counsel since Mr. Brush said that some members of his office had "problems" with the third agency rule concept.

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2. [REDACTED] After talking with Mr. Shackley and Mr. Lapham, I advised Mr. Brush that we had briefed both Representatives Udall's and John Dingell's (D., Mich.) Subcommittee staffers and it would seem appropriate for DOE to mention that they had contacted CIA who had advised them of these contacts and suggested that these Subcommittees continue their contacts with CIA with respect to Agency material.

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3. [ ] Later in the day, Mr. Shackley received a telephone call from John F. Ahearne, Office of the Secretary, Department of Energy, who commented that DOE's General Counsel felt that invoking the third agency rule was tantamount to invoking executive privilege. I indicated this was not the case at all and so informed the office of Eric Fige, Deputy General Counsel, DOE. I also suggested that if he had further reservations about this to contact Mr. Lapham.

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GEORGE L. CARY  
Legislative Counsel

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